

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Auction of Licenses for the
700 MHz Guard Bands

)
)
) DA 00-559
) WT Docket No. 99-168
)

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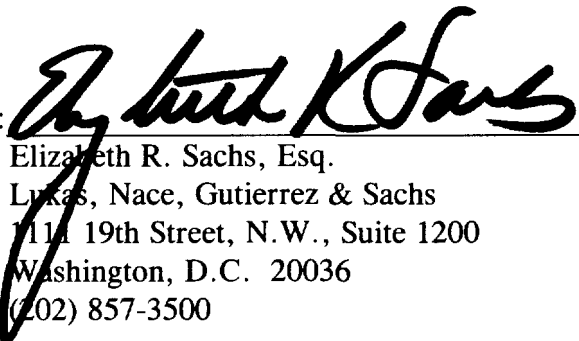
To: Wireless Telecommunications Bureau
Federal Communications Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


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March 22, 2000

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), by its attorneys and in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice, respectfully submits its comments on the upfront payment requirements and minimum opening bids proposed for the recently-allocated 700 MHz Guard Bands.¹ AMTA urges the Commission to reduce the amounts proposed which, at their current levels, will preclude auction participation by the very entities the FCC anticipates will elect to pursue Guard Band Manager roles. In support thereof, the following is provided.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. AMTA's members are actively engaged in the provision of commercial wireless service to the non-consumer radio user throughout the country. Many also sell equipment and provide frequency selection, equipment maintenance and system management services to Part 90 eligibles who wish to operate their own radio facilities in support of their primary business activities.

2. Their expertise in both these aspects of radio communications make AMTA's members prime candidates to act as Guard Band Managers pursuant to the rules recently adopted by the FCC in respect to disposition of the 6 MHz of Guard Band spectrum in the 746-806 MHz

¹ Public Notice, Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000, DA 00-559 (rel. March 10, 2000) ("Notice").

band.² Moreover, their experience is the product of the highly competitive two-way radio marketplace, a background well-suited to the pro-competitive environment the FCC hopes to foster among Guard Band Managers. It is unlikely they will elect to pursue that role, however, unless the Commission significantly reduces the upfront payment and minimum opening bids proposed for the upcoming 6 MHz Guard Band spectrum auction.

II. BACKGROUND

3. The Guard Band Manager is an entirely new licensee entity, born out of the Commission's dual obligation to protect the operation of public safety systems on adjacent spectrum and to promote the efficient use of limited spectrum resources. The 746-806 MHz spectrum band, a portion of which is to be managed by such licensees, had been assigned to television Channels 60 through 69, but has been reallocated to and will become useable for wireless services when those stations complete their transition to digital television, a date currently set at no earlier than 2006. Consistent with Congressional directives, the FCC has allocated 24 MHz of the band for public safety services and another 30 MHz for broadband wireless access capacity. The remaining 6 MHz, the spectrum to be auctioned pursuant to the instant Notice, is being made available exclusively to Guard Band Manager licensees who will act as spectrum "brokers" or, in the FCC's parlance, "demand aggregators" for fixed or mobile communications, excluding use by entities desiring cellular system architecture.³

² WT Docket No. 99-168, *Second Report and Order*, DA 00-90 (rel. March 9, 2000) ("2nd R&O" or "Order").

³ Cellular system architecture is defined in the Order as one where large geographic service areas are segmented into many smaller areas or cells, each of which uses its own base station, to enable frequencies to be reused at relatively short distances. 2nd R&O at n. 34.

4. That restriction, along with the stringent technical standards imposed on systems operated pursuant to Guard Band Manager licenses, are designed to ensure that adjacent public safety users enjoy the same level of interference protection from Guard Band operations as they are entitled to from other public safety users. The moniker "Guard Band" was selected advisedly: this band will act as a buffer between public safety operations and the interference likely to be generated by the multiplicity of transmitters expected to be implemented to support broadband wireless access systems, systems not subject to public safety out-of-band emission limitations. That interference instead will be experienced by users on the Guard Band spectrum for which AMTA's members are expected to bid in the rapidly approaching auction.⁴

III. DISCUSSION

A. The Guard Band Spectrum Is Too Heavily Encumbered to Support the Auction Payments Proposed _____

5. In an era in which unencumbered spectrum in useable bands has become, at best, extraordinarily difficult to identify, the Guard Band spectrum at issue herein is nonetheless unique in its degree of encumbrance. Its utility is affected first and foremost by the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation. These licensees are required to vacate this spectrum and relocate new, digital operations to the second 6 MHz channel each has been assigned by 2006. Nevertheless, some licensees may be eligible for an extension of the deadline based on Congressionally mandated

⁴ Since release of the Notice, the FCC has announced a postponement of the 30 MHz CMRS auction in this band. AMTA urges the FCC to retain its original plan of providing approximately one month between the 30 MHz and the Guard Band auctions. This may allow Guard Band Manager applicants to assess more accurately the technology likely to be deployed in the adjacent CMRS spectrum, a critical issue as described more fully infra.

factors set forth in the Balanced Budget Act of 1997⁵. Until the deadline, Guard Band Managers' spectrum leasing options will be limited to whatever portion of their licensed capacity, if any, can be used without violating the highly protective television protection criteria. It will be at least six years, and perhaps substantially longer, before Guard Band Managers actually will be able to utilize the lion's share of this spectrum in the most commercially viable markets in the country and begin to recoup their investment, a relative eternity in a wireless marketplace that reinvents itself almost daily.

6. Guard Band spectrum also will be encumbered by the interference anticipated from Commercial Mobile Radio Service ("CMRS") systems operating in the neighboring 30 MHz. The Commission has elected not to impose out-of-band emission limitations in any way comparable to those applicable both to public safety users on their 24 MHz of spectrum and the 6 MHz Guard Band allocation on systems expected to populate the broadband CMRS allocation. That decision will permit licensees in those bands broad latitude in system architecture and technology selection and is expected to benefit the wireless-consuming public. Nevertheless, it is apparent that the cost of this policy choice will fall on Guard Band Managers and those who use their spectrum since their systems that will receive whatever interference otherwise would have affected the public safety allocation in this band. That fact will impact the value of the Guard Band spectrum even after it has been cleared of television encumbrances.

7. Finally, the economic utility of the Guard Band allocation will be affected even by the technical requirements adopted to ensure interference protection for public safety systems.

⁵ 47 USC 309(j)(14)(B).

First, all Guard Band usage will require prior coordination with public safety systems, which systems will be entitled to interference-free operations. The availability of some Guard Band spectrum necessarily, therefore, will be dependent on the location and station parameters of proximate public safety systems. Moreover, the out-of-band emission standard applicable both to the public safety and the Guard Band allocation is challenging if the spectrum efficiencies of digital technology are to be attained. The standard adopted is consistent with today's analog technology, but limiting this spectrum to additional analog systems would meet neither the FCC's objective of promoting efficient use of this spectrum nor the legitimate desire of Guard Band Managers to derive intensive use of a very limited spectrum resource through deployment of state-of-the-art, user-attractive technology. The short time between adoption of the rules and commencement of the auction leaves little opportunity for prospective bidders to fully evaluate availability or pricing of equipment which meets both the technical and market requirements. It is anticipated that such equipment will be developed, but the time for doing so is uncertain and the cost of doing so is as yet unknown, particularly in respect to the subscriber unit.

8. Individually, these factors will impact when Guard Band spectrum will be useable in the markets of greatest spectrum demand, what portion of it will prove commercially viable, and how efficiently it can be deployed. Collectively, they support a reduction in both the upfront payments and minimum opening bids in the Guard Band auction.

B. The Proposed Auction Payments Should Be Reduced to
Promote a Competitive Auction with Small Business Participation

9. AMTA applauds those aspects of the 2nd R&O that evidence a clear Commission commitment to promoting participation in the Guard Band auction by a broad range of applicants

including the smaller and mid-sized businesses that typify AMTA's membership. One noteworthy example is the FCC's decision to issue Guard Band licenses in the 52 Major Economic Areas ("MEAs"), rather than award either nationwide or regional authorizations as recommended by some parties. The Association shares the Commission's concern that many small or medium-sized businesses would be incapable of bidding on a nationwide authorization. AMTA also concurs fully that:

MEAs will facilitate greater participation in the auction, allow a larger number and more diverse pool of Guard Band Managers than nationwide or larger regional licensing areas and result in increased competition, and result in broader flexibility in spectrum offerings by Guard Band Managers.⁶

10. AMTA cautions the FCC that this pro-competitive, pro-diversity initiative will be severely undermined, and perhaps doomed, by imposing broadband CMRS-like upfront payments and minimum opening bids on heavily encumbered spectrum that is expected to be made available to meet specialized, individualized business communications requirements. Discussions with AMTA's members reveal a dramatic reduction in the number considering participating in the Guard Band auction since the payment figures were released. Smaller, primarily local entities view the initial payment obligations as unrealistic in light of the encumbrances outlined above, and assume those figures presage a purchase price substantially beyond their means. Even the larger local and regional operators consider the numbers unreasonable for encumbered spectrum that may be largely unuseable for an extended period of time. Many expected to participate in the auction, but will be reluctant to do so if the cost of securing an opportunity to bid may be tied more to CBO expectations than to the actual value of the spectrum.

⁶ 2nd R&O at ¶ 70.

11. It may not be possible to do a precise apples-to-apples comparison of the proposed Guard Band upfront payments and, even more critically, minimum opening bid payments with those adopted for other services and/or other bands.⁷ All auctioned spectrum has certain unique properties, some positive and some negative, that must be factored into auction payment calculations and spectrum is auctioned in different geographic and channel parcels. However, it might be useful to consider even a rough comparison between this Guard Band proposal and the recent 220 MHz spectrum auction.

12. 220 MHz spectrum was auctioned in nationwide, six Economic Area Groups (EAGs) and 175 Economic Areas (EAs) groups. The minimum opening bid for an unencumbered nationwide license was approximately \$440,000.00, while the average EAG price was less than \$80,000.00. Most local licenses had a minimum opening bid of only \$2,500.00. By contrast, the minimum opening bid for the 1 MHz New York Guard Band authorization alone is \$1,868,000.00. Most markets are priced at more than \$100,000.00 and many are more than \$200,000.00. While Guard Band licenses include more spectrum, when comparing them with 220 MHz authorizations the immediate and even long-term utility of much of the capacity is, at best, highly uncertain. It does not appear that the FCC fully considered the encumbrances associated with this spectrum when setting the auction prices. The Commission also may have failed to distinguish adequately between the uses to which this spectrum can be put by virtue of the FCC's rules versus the greater capacity, and therefore value, that can be derived from the cellular system architecture typically deployed by CMRS licensees.

⁷ The Notice does not describe the valuation process used by the FCC to set these payment requirements.

13. For these reasons, AMTA recommends that the Commission reduce both the upfront payments and the minimum opening bids for this spectrum to one-third or one-quarter of their current valuations. The Association is confident that lowering those initial obligations will draw a much greater number of auction participants and let marketplace forces, not government estimates, dictate the final bid price. This is precisely what occurred in the 900 MHz SMR auction. In that case, the upfront payments were properly calculated to reflect the level of incumbency in the band with the highest payment set at less than \$75,000.00. There were no minimum opening bid requirements. Because the entry fee was reasonable, the auction attracted a substantial number of qualified participants and was highly competitive. In the end, it generated over \$200,000,000.00 in auction bids because the market determined that to be the value of the spectrum. The reductions proposed herein would be conducive to a similar result. They would be consistent with the FCC's intention to promote participation by small and mid-sized operators and, ultimately, would enhance the competitive nature both of the auction and of the subsequent implementation of systems on this spectrum.

IV. CONCLUSION

14. For the reasons described above, AMTA recommends that the FCC reduce the proposed Guard Band auction payments to the levels proposed herein.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this March 22, 2000 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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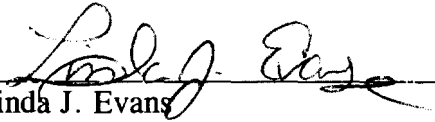
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